

**ENTERED**

June 13, 2018

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

ALFONSO ATKINSON,

Plaintiff,

VS.

EPIMENIO YSASSI,

Defendant.

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CIVIL NO. 2:17-CV-00216

**ORDER**

Before the Court is the August 3, 2017, Memorandum and Recommendation (“M&R”) of the Magistrate Judge to whom this case was referred, Dkt. No. 10; Plaintiff’s August 18, 2017, objection to the M&R, Dkt. No. 11; the Magistrate Judge’s December 11, 2017, Order, Dkt. No. 14; the Plaintiff’s December 29, 2017, objection to the Order, Dkt. No. 16; and the Magistrate Judge’s February 12, 2018, M&R, Dkt. No. 20. The Court **DISMISSES WITH PREJUDICE** Plaintiff’s action and **DIRECTS** the Clerk of the Court to forward a copy of this Order to the Manager of the Three Strikes List for the Southern District of Texas at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).

**I. August 3, 2017, M&R**

The August 3, 2017, M&R recommends that the Court dismiss with prejudice Plaintiff’s action and count the dismissal as a “strike” for the purposes of 28 U.S.C. § 1915(g). Dkt. No. 10 at 6–7. On August 18, 2017, Plaintiff filed an objection to the M&R. Dkt. No. 11.

The Court reviews objected-to portions of the Magistrate Judge’s proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1). Plaintiff’s objection is frivolous, conclusory, general, or contains no arguments that the M&R has not already considered. *See* Dkt. Nos. 10, 11; *Battle v. United States Parole Comm’n*, 834 F.2d 419 (5th Cir. 1987) (determining that a district court need not consider frivolous, conclusive, or general objections).

After independently reviewing the record and considering the applicable law, the Court **ADOPTS** the M&R in its entirety, Dkt. No. 10, and **OVERRULES** Plaintiff's objection, Dkt. No. 11. The Court **DISMISSES WITH PREJUDICE** Plaintiff's action. This dismissal counts as a "strike" for the purposes of 28 U.S.C. § 1915(g). Accordingly, the Court **DIRECTS** the Clerk of the Court to forward a copy of this Order to the Manager of the Three Strikes List for the Southern District of Texas at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).

## **II. December 11, 2017, Order**

The Magistrate Judge's December 11, 2017, Order, Dkt. No. 14, denied Plaintiff's October 25, 2017, motion for leave to amend his complaint, Dkt. No. 13. On December 29, 2017, Plaintiff filed an objection to the Order. Dkt. No. 16.

The Court will "modify or set aside any part" of a Magistrate Judge's non-dispositive pre-trial ruling that is "clearly erroneous or is contrary to law." FED. R. CIV. P. 72(a). Under this highly deferential standard, the Magistrate Judge's ruling "should not be rejected merely because the court would have decided the matter differently." *Arvie v. Tanner*, No. 12–1648, 2012 WL 3597127, at \*1 (E.D. La. Aug. 21, 2012) (citations and internal quotation marks omitted). The Magistrate Judge's decision "must be affirmed unless 'on the entire evidence [the Court] is left with a definite and firm conviction that a mistake has been committed.'" *Arvie*, 2012 WL 3597127, at \*1 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

After independently reviewing the record and considering the applicable law, the Court **OVERRULES** Plaintiff's objection. Dkt. No. 16. For the reasons stated in the Magistrate Judge's December 11, 2017, Order, "[a]llowing Plaintiff to amend his complaint would be futile." Dkt. No. 14 at 1–2.

## **III. February 12, 2018, M&R**

The February 12, 2018, M&R, Dkt. No. 20, recommends that the Court deny Plaintiff's February 6, 2018, motion for default judgment, Dkt. No. 18. No party filed an objection to the M&R. *See* 28 U.S.C. § 636(b)(1) (setting a 14-day deadline to

file objections; FED. R. CIV. P. 72(b)(2) (same); *see also* Dkt. No. 20 at 3 (advising parties of the 14-day deadline).

After independently reviewing the record and considering the applicable law, the Court **ADOPTS** the M&R in its entirety. Dkt. No. 20.

#### **IV. Conclusion**

In conclusion, the Court:

- **DISMISSES WITH PREJUDICE** Plaintiff's action, and
- **DIRECTS** the Clerk of the Court to forward a copy of this Order to the Manager of the Three Strikes List for the Southern District of Texas at [Three\\_Strikes@txs.uscourts.gov](mailto:Three_Strikes@txs.uscourts.gov).

The Court will direct entry of final judgment separately.

SIGNED this 13th day of June, 2018.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', written over a horizontal line.

Hilda Tagle  
Senior United States District Judge